



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: 200913067
Release Date: 3/27/2009

Date: December 31, 2008

XXXXXX
XXXXXX
XXXXXX

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Uniform Issue List:
501.03-08

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: November 14, 2008

Contact Person:

XXXXXX
XXXXXX
XXXXXX

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = XXXXXX

M = XXXXXX

x = XXXXXX

y = XXXXXX

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

You are a nonprofit organization incorporated in the State of M. Your Articles of Incorporation provide that you are organized for any of the charitable purposes allowed under section 501(c)(3) of the Internal Revenue Code ("Code").

You have three uncompensated directors on your Board of Directors. These three directors also serve as your officers. At least two of your director/officers are related by blood or business relationship.

You plan to educate youths on topics such as sexually transmitted diseases and drugs. You also plan to promote abstinence. You propose to accomplish these goals using speaking engagements, novels, theatrical plays, and films. Specifically, you plan to use a novel written by one of your director/officers, A, and the corresponding play based on the novel. Part of your goal is to get that novel into schools nationwide and to have the novel translated into several foreign languages.

The former spouse of A receives x percent of the royalties from the sale, distribution, or printing of materials associated with the novel. A may also be entitled to y percent of these royalties by virtue of the fact that A is the author. A contract signed solely by A purports to convey A's interest in the royalties to you. That same document also purports to convey all of A's interest in royalties from any future works to you, but states that all of the royalties from any movies based on the novel will be retained by A.

You have not begun to operate at this point in time. However, prior to your incorporation, A put on three plays and some number of speaking engagements in an individual capacity. A did not receive any compensation for the speaking engagements. A did receive money for the performance of the plays. All of this money was used to pay play expenses. In addition, you have undertaken a financial obligation to repay A for play expenses. No plays have been performed since you were incorporated.

Section 501(c)(3) of the Code provides an exemption from taxation for organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations ("Regulations") provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated for one or more of the purposes specified in that section. Thus, an organization that fails to meet either the organizational or operational test is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt activities specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the Regulations defines private shareholder or individual as a person having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Therefore, to meet the requirement of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 76-206, 1976-1 C.B. 154, states that a nonprofit organization formed to generate community interest in the retention of classical music programming by a local for-profit radio station did not qualify for exemption under section 501(c)(3) of the Code. The organization sought program sponsors, encouraged continuation of contracts by existing sponsors, urged the public to patronize the sponsors, solicited subscriptions to the station's programming guide, and distributed materials promoting the classical music programs. The organization's board of directors did not include any representatives of the for-profit radio station and the organization received most of its support from the general public. The Service found that the organization's efforts benefited the for-profit radio station in more than an incidental way, thus, served a private rather than public interest.

Better Business Bureau of Washington D.C., Inc. v. U.S., 326 U.S. 279 (1945) holds that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of statutorily exempt purposes.

In Christian Manner International, Inc. v. Commissioner, 71 T.C. 661 (1979), the Tax Court considered whether an organization whose stated purposes were to teach and promulgate the gospel of Jesus Christ, to develop and maintain a Christian seminar center and international headquarters, to make direct application of the corporation's funds in the aid and assistance of those considered to be in need or infirm, to contribute to institutions which seek to evangelize and disciple, to provide scholarships or other assistance for worthy and indigent students, to share by media presentation the claims of the gospel of Jesus Christ, and for such other charitable, religious, and educational purposes as petitioner's directors may from time to time determine was exempt for income tax under section 501(c)(3) of the Code. The court found that the organization's primary activity was the publication and sale of books written by its founder which were religiously inspired and oriented but were sold commercially. The court concluded that the organization was not exempt under section 501(c)(3) of the Code because it engaged in impermissible private benefit to its founder.

Based on the information submitted, you have failed to show that you will not be operated for a substantial nonexempt private purpose. Your activities are similar to those in Christian Manner International, *supra*. You operate primarily to promote, distribute, and sell a novel written by one of your director/officers and to promote and sell performances of a play based on that novel. You may also operate to obtain film options based on the novel. All of these activities are similar to commercial operations as royalties are generated from the sale of the novel and its derivative works. A percentage of these royalties go to the former spouse of one of your director/officers. The rest of the royalties may go to your director/officer who wrote the novel. There does not appear to be any transfer of the underlying copyright to you, which means that the true owner of that copyright may benefit from your promotion activities in the future. These facts show that you, like the organization in Christian Manner International, Inc., *supra*, are operated for the benefit of private individuals.

The payment of royalties to the former spouse of one of your director/officers constitutes an impermissible private benefit. The potential for royalty payments to one of your director/officers and the residual copyright ownership by that director/officer also constitutes inurement of your net earnings to an insider. Section 1.501(c)(3)-1(d)(1)(ii) and section 1.501(c)(3)-1(c)(2) of the Regulations, respectively, make clear that both impermissible private benefit and inurement of net earnings to an insider are fatal to a determination of exempt status.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements